

Response to the Planning Commission's committee review of the draft Purchase of Development Rights Ordinance- 12/6/09

- By way of introduction it should be noted that the Ordinance is only one of many tools available to strengthen farming/forestry and to guide land development in a manner consistent with Madison's Comprehensive Plan.
- Generally, in order for a PDR program to accurately reflect the goals of the County, a public education/discussion period is necessary prior to adoption of a suitably revised ordinance. This open discussion among interested citizens is what the PDR Committee members seek.
- If the Supervisors agree to hold a public education period, we suggest that the first four months of 2010 be scheduled for public sessions at which various resources be made available, including the Virginia Office of Farmland Preservation Director, farmers in other counties who have participated in PDR programs, educational visuals explaining what this voluntary program does and does not do, and possibly speakers from other areas, such as the director of Lancaster, PA's very successful farmland preservation program.

The concerns of the planning commission and the responses of the PDR Study Committee are as follows:

“1) Large amount of taxpayers’ money given to a very small select group of landowners that have little real need. Discriminatory by definition.”

Several large issues are buried in this one short statement.

- The cost to county taxpayers,
- A preference to landowners with ‘little real need’,
- The program would be discriminatory.

Cost—this issue is one to consider from all sides. Buying development rights from a farmer or forestland owner is expensive. But what price does the County pay if that farm or forest has houses built on it?

Agricultural and forest uses of land are a net revenue for the County, even at land use taxation rates, while residential use of land costs the County at least \$1.20 for every \$1 of tax brought in. In Madison County, every acre of privately owned forestland contributes approximately \$1,000 to the local economy. 700 county residents owe their jobs to the county's private forestland. For every \$1 stumpage paid to a Madison forest owner, over \$41 is added to the local economy. (DOF, Commonwealth of VA.)

In the long run—which is why we carefully craft and adopt a Comprehensive Plan—those purchased development rights are a good

deal for the County taxpayers. Our taxes won't have to pay for a new school, new emergency services, expanded County Government, new roads and infrastructure.

What is the cost to taxpayers in terms of deferred taxes under **land use assessment**? Are we going to eliminate land use assessment because of the cost to the county?

No, because the benefits outweigh the costs.

Keeping those farms in agriculture brings money back into the county year after year. Farmers spend money. Agribusinesses are confident that farms are going to around for the future, so ag infrastructure remains and can even expand.

Local taxpayer money is not the only funding source for a PDR program. Many counties have applied for **Farm and Ranchland Protection Program** grants, for other **Federal** conservation grant monies, or have taken advantage of the Commonwealth's matching funds for approved PDR programs, and so have had a relatively small local match required. Some counties, notably Rappahannock and Fauquier, have obtained their matching funds through **outside donors**. There are potential donors who are interested primarily in farm or forest protection who might contribute to such a dedicated local government PDR fund; in fact the Madison Conservation Fund has already pledged \$8,000 dollars in seed money for such use. As in Fauquier County, on occasion there may be **developers** seeking accommodation on zoning matters who might be appropriately required to contribute funds to help mitigate the loss of farmland or forest. There is probably no way to accomplish a purchase of development rights without some local tax dollars but it can be minimal. Carefully chosen properties can save a great deal of money in lost tax revenue as a result of residential development.

Finally on costs, the adoption of an ordinance does not require its funding. The BOS can invest as much or little as it chooses in a PDR program. But **when** funding becomes available through private, state or federal sources and **if** Madison has no approved ordinance, that funding will go to other counties that have adopted a PDR Ordinance.

Landowners with 'little real need'—the ranking criteria are aligned with the values identified in the Comprehensive Plan as important to the County.

The PDR Committee developed and repeatedly revised a ranking worksheet to determine which applicants' development rights would be most valuable to the County as laid out in the Comprehensive Plan. Heading the criteria are points for a working farm and/or forest where that property provides the principal income to a family. The committee prioritized individuals who manage their land for their family income -- for tax revenue purposes and for community integrity.

If the County wants to change the ranking to give priority to those who farm as a part-time occupation, that is a choice that should be discussed, and

within the context of the Comprehensive Plan. If the underlying message in this concern is that PDR funds will subsidize a wealthy landowner with no real need, it might be noted that the sole intent of this ordinance is to meet the County's goals rather than to benefit needy landowners.

Discriminatory by definition—any ranking system by nature discriminates against someone; the key to making this work for Madison County is to most highly value the County's interests. The PDR committee worked diligently to see that the ranking system met the stated intent of the Comprehensive Plan and the input from committee members. Once again, if the Board of Supervisors feels the ranking system doesn't serve the County's fiduciary and Comp Plan interests, it should be amended.

“2) Expensive system if effective.”

It is only expensive compared to the status quo and we believe that changes in land use, in cost of living, and in pressure to develop are still to come for Madison. And it is demonstrably less expensive to the County than educating more children, building more roads, and governing a suburban population.

The highly successful and mature PDR program of Lancaster County, PA—designed to preserve an active, productive agriculture industry--has documented that every \$1 of agricultural sales is multiplied 2-6 times in the local economy. In Madison, every single acre of privately owned forestland contributes approx. \$1,000 to the local economy. For every \$1 in stumpage paid to a Madison forest owner, more than \$41 in value comes back to our economy. Working lands make money for the county, houses cost money to the county.

Lancaster preserves farmland for an average of \$800 per acre; far less than the cost of buying the land.

“3) Not enough state money to compensate landowner for property value.”

The State never intended to compensate 100% of local PDR programs; it was meant to provide 'seed' money or support existing programs and it requires a local commitment.

As noted before, funding can come from a number of different sources and while it is presently true that state matching funds are limited, that may not always be the case. It is desirable to be in position to take advantage of funds rather than waiting to play catch-up in a very competitive funding environment. Other rural Virginia counties are far ahead of Madison on adopting an approved Virginia ordinance and should funding levels increase, they will be poised to apply for that money.

“4) Relies on public monies to purchase the development rights which are not a reliable source.”

Yes, it is true that a PDR program can rely largely on public money—from the Federal, State, and Local levels. But there is no requirement to purchase development rights if there is no money available. But there is NO remote possibility of being granted public money without a program on the books.

Unreliable funding is no reason to not implement a worthwhile program; all funding is presently unreliable. If the effort is important to Madison, our challenge might be to develop a reliable funding source, such as private donations or a ‘Madison-Made’ surcharge aiming at protecting values important to visitors and residents who are supporting a program to protect the way of life they treasure. 25 cents on a bottle of local wine or 5 cents/pound on local apples would be a pleasure if you knew it would help keep farms working.

“5) Difficult to implement fairly”

This program will be as fair as the system designed to make it work. If the ranking worksheet is tested and refined to accurately reflect the County’s long-term interests, then the Program’s implementation will not be an individual’s opinion but will be based on objective criteria.

Many of the issues surrounding PDR programs have been encountered and solved by other localities—that information is freely shared at the Virginia State PDR Manager’s group and by Planning District Commissions.

“6) Only preserves open space. Does not enhance or protect production agriculture.”

On the Ranking worksheet, Working Lands Resources are a total of 35 points out of a possible 100. Open Space Resources are only 15 points out of 100. The highest points were given to working lands that produce income and are productive—open space does not preclude agriculture. Both income and soil quality are given ranking points. Our County agricultural extension agent, our regional Forest Conservation specialist, as well as two farmers in production agriculture developed the criteria for defining and ranking “productive” lands the PDR committee used in large part.

If farmers and forest landowners are able to sell development rights, the continued highest and best value for the land will be agriculture or timber.

7) Terms of PDR are too long (in perpetuity.) Does not offer any flexibility for adjustments for changes in family that may require estate planning changes.

From the point of view of the County, if a landowner were to sell his development rights for a limited term only, the County could not possibly afford to pay full price

for them in the first place. It's costly to negotiate, appraise, and complete an easement; if it were not permanent, those costs would need to amortize over the term and might prove prohibitively expensive to the County.

A PDR program is voluntary; it is not going to suit all families or all needs. It is intended to be one option only. The decision to enter into a PDR program should support an estate plan, not be one. If a family wants flexibility in estate planning, they may be better served by other tools, although the point should be made that there are substantial estate tax benefits from placing this kind of easement on a property. Because a landowner has sold some of the rights to the land, it is worth less to the heirs and it may be possible to pass it down—keeping a family on its land—without having to sell off land to pay estate taxes as often happens.

If the County wants to provide some tax relief for smaller landowners in an area that qualifies as an Agricultural or Forestal District, we might consider adopting Districts as a kind of term easement. The Comp Plan states Madison will also embrace Ag/Forestal Districts as a tool.

“8) Only benefits farms with a stable income (farm or off farm.) Could be tool to solve a short term financial crisis that results in a long term impact of loss of the family farm.”

Two issues: -

Need stable income.

We attempted to address the issue of absentee landowners, or those who live on land that others farm; giving preference to owner-operators first. And then, giving preference to farms and forestland that actually supports County residents.

Might cause loss of the family farm.

A case might be made that, because of the Federal estate tax benefits for eased land, a working farm in a PDR program might be more likely to remain in family ownership because it wouldn't have to be sold to pay inheritance taxes. If the development rights are appropriately priced, the landowner will be able to secure the family's financial security by appropriate investment while keeping the working farm or forest in the family's possession.

A PDR program is not a zero sum equation; under the terms of the easement, a farmer or forest owner may retain limited development rights for emergency use. Because the landowner receives fair market value for the development rights they are ceding they can access part of the land equity without giving up ownership or the right to profit from the land's production capabilities.

Finally, although preference is given in the ranking criteria to generational owner-operators and farms that support Madison County residents, this tool is not going to solve poor business management, poorly organized farm ownerships, or poor decisions and unprofitable practices. No land conservation tools will, they are not designed for that. The purpose of the PDR program from the farmer and

forest landowner side is to help them shield working lands from development pressures, IF THEY CHOOSE, through compensatory (rather than regulatory) approaches to conservation

“9) Removes land from the agricultural base and adds to open space non-agricultural land. Opens more questions concerning land use. Should open space be taxed at the same rate as agricultural land? Open space land does not have the same financial operating or management risk as agricultural land.”

Removes land from the ag base and adds to open space non-agricultural land. A good, working PDR program does just the opposite; it keeps land in the agricultural base that might otherwise be subdivided. Once houses are built on land, it will never again be farmed. The terms of a PDR easement can be drafted in such a way that active farming and forest operations are a term of the easement.

The next issue: land use taxation rates for farm vs. open space need to be approached from a broader perspective than just a PDR program. The PDR program can prioritize existing working lands (this ordinance tries to do just that) and, if we choose, it can make a condition of the easement that active farming and forest operations continue on the land. Madison County’s Comprehensive Plan has said that her citizens want working farms and forests above all other land uses and then it identifies tools to help that happen. Changes to current zoning and planning practices are listed first and should be considered as a means of solving some of the criticisms leveled at a PDR program, listed second as a tool.

Madison’s Comprehensive Plan states (page 55):

“Goal 2: Maintain agriculture and forestry as the primary land use in the County.

Objective 1: Develop a plan for providing land owners options for the voluntary preservation of farm and forest lands.

Major Strategies

- 1. Enhance current zoning and planning practices which allow for and encourage the retention of farm and forest lands.**
- 2. Establish a county Purchase of Development Rights program or Transfer of Development Rights program as allowed by the state legislature. Pursue all available state, federal and private funds compatible with any program developed.**
- 3. Encourage adding financial incentives for establishing agriculture and forestal districts.**

- 4. Encourage economic development in the county that is compatible with agriculture and forestry.***
- 5. Continue the timed phasing of subdivisions of land such as the current 4 divisions in 10 years as a tool to assist keeping large tracts intact.***
- 6. Maintain the limitation of 4 lots utilizing a private road”***

It is undoubtedly true that working lands have higher operating costs and risks; these are issues that cannot be addressed by a PDR program but instead are incrementally being addressed by a number of other strategies outlined in our Comp Plan. We need an integrated approach to meeting the land use goal above; using all the tools available to make sure the land is there to be worked, the people are suitably supported by their government, and the product market enhanced by the strategies listed in the Plan. The Madison Board’s support of the Madison Farmer’s Market and of the Buy Fresh Buy Local guides is but one example of such market support.

(Comp Plan, p. 54)

- “4. Promote and encourage emerging agricultural and forestry enterprises as viable alternatives to traditional production.***
- 5. Encourage all forestland owners to implement sound forest management plans.***
- 6. Provide educational programs for forestland owners to explore traditional and non-traditional revenue opportunities related to forest production.***
- 7. Encourage formation of private agriculture and timber production and marketing groups to take advantage of associated economies of scale.***
- 8. Include direct marketing to the consumer and alternative marketing of value added products as uses allowed by right in agriculture and conservation zones.”***

“10) Does not promote agricultural stability or sustainability because the PDR program is focused on the land, not the farm business.”

It is true the PDR program is focused on the land, not the business, except to the extent that the business will absolutely not exist without the land. And once the land is built on, it never again will be available to grow food or products. Again, other strategies need to be implemented along with a PDR program if we are serious about maintaining these land uses.

“11) Based on agricultural census data and IRS statistics, average farm incomes are too weak to capitalize on the tax incentives designed to reward farm owners for the value of the PDR donation; therefore, farms cannot realize the full benefits of the tax credit.”

This is a common misconception of what a PDR program is. There is no charitable ‘donation’. While participation is entirely voluntary, the point is that the landowner sells the development rights, at full market value, to the County.

Many farmers who might be interested in conserving their farms and taking advantage of the tax benefits for a donated easement have found that those donation benefits are not sufficient to compensate them for what they’re giving up. So a ‘purchase’ program is quite attractive to many working farmers and forestland owners. The farmer or forest owner is getting the market value of what they’re giving up, while retaining ownership of the land.

“12) The sale of small building lots from the farm generate as much or more income than the values of the PDR (including tax incentives) without easement restrictions.”

If one is primarily interested in maximizing income from subdividing the farm regardless of the impact on the farming operation, then the above statement is true. But the program assumes the working landowner wishes to keep the property in production rather than subdividing it and in this scenario the easement restrictions are not a burden but something the working farmer would do in any case. Many working farmers wish to see their land kept whole and in production, even after they are gone. The PDR program is one way they can access some of the equity tied up in their land without selling or dividing it.

Development rights can be valued by different means: some counties use a flat ‘per development right’ amount, some hire a certified appraiser to value the rights being sold. The price paid for those rights equals their market value; that value is not discounted, as it would be for donated easements.

“13) Land cannot be developed and utilized for more intensive uses.”

This is absolutely true, and the whole point of a PDR program. If a landowner wishes to apply for the PDR program and the County, through the ranking system adopted, determines that the applicants land is most valuable to the County as farmland or forestland, that valuable farm or stand of trees will not be developed. This only works when the County has decided where it wants to see more intensive development, as indicated by the Comprehensive Plan and the Zoning Map.

The common fear is that if development potential is removed from a farm, nobody will want that farm when it comes time to sell, when, in fact, other PDR programs indicate the exact opposite is true. Farm buyers like knowing that farm

will be there for the future and they won't be forced out by development in the future. They're willing to pay for that security.

“14) How will it affect affordable housing as required by the state?”

The answer to #14 is found in #13; if working rural lands are most highly valued by the County, affordable housing sites will be identified in other areas. Affordable housing should exist close to existing stores, schools, and other services and is properly not scattered across the farmland.

“15) Will increase pressure for high density housing and sewer plant expansion.”

Madison's Comprehensive Plan states (p 72):

“If Madison County intends to encourage the continuation of farming and forestry as key elements of the local economy, some areas with good agricultural and forest products capability need to be preserved for those activities. Lands designated for agriculture and forestry should not be divided extensively for residential building lots, and the County will not authorize the extension of public water and sewer systems to such areas. Instead, most new homes should be built in areas that could eventually have public water service, and where other public services and facilities can be made available in the future.”

There is no realistic expectation that working land preservation will result in high density housing but it could possibly, some day, require expansion of sewer and water services to the County village centers.

“16) Long term will increase and accelerate population growth.”

Why? It possibly can have a small effect on steering residences towards villages and towns rather than to productive farmland.

“17) Tax dollars better spent on other more obvious needs.”

The only reason Madison County might consider this program is because it does two things:

1. It saves the County tax dollars
2. It maintains agriculture and forestry as a primary land use, our Comprehensive Plan goal.

How does it save tax dollars? According the American Farmland Trust, in Virginia working and open lands cost on average .19 for every dollar taken in tax revenue, even under land use rates. The county gets .81 in net revenue. Land with houses costs on average \$1.20 for every dollar taken in.

Residential land costs the county more than it pays.
Clearly, saving working lands saves the County tax money.

And concerning the second point, every month the county spends untold dollars on legal council, staff, and both appointed and elected officials to guide and plan for the development of the county land base; these are public funds expended on development. That there is no balance of public funds spent on protecting land from development through a voluntary program such as is being discussed here is short sighted and does not serve the long term goals of Madison County.

“18) Current system and plan works well with voluntary giving. We get the most effective utilization for little money spent.”

We assume this refers to conservation easement donations and, if so, agree that it works well for some landowners. There are, however, some farmers who can't afford to fully donate an easement as the state tax credits are given on 40% of the value of the easement rather than on the full value. Some owners of working land would like to conserve their land for future generations but can't swing anything but full value for what they're giving up. When that land is considered valuable to the County's long term goals, given a high priority in the ranking, and considered for funding under a purchase of development rights program, it's a win/win situation for the County and for the working farmer/forest owner.

The other consideration is that under a system of voluntary easement donation, the County has little say as to which land is conserved and which will be potentially developed, within the constraints of existing zoning. The current system does not necessarily protect high value areas as defined by the County. Madison loses approximately 1,000 acres of working forestland every year; A PDR ordinance and program is one small way that the County can recognize that specific farmland and forestland is important and worth protecting for the benefit of County citizens, for economic, cultural, environmental, and social reasons.

“19) Driven and pushed by outside interest.”

We don't quite know what outside interest or interests the Planning commission committee might be referencing but successful PDR programs in many other Virginia counties are evidence of its value to those citizens. The directive in our Comprehensive Plan to establish a Purchase of Development Rights program and pursue possible funding sources for such a program was not only debated and authored by Madison citizens, but also duly adopted by both the Planning Commission and the Board of Supervisors. Committee members were not coerced, cajoled, or biased; all committee members are Madison County residents and the public at large was solicited for participation.